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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H-2007-295

JOHN DANIEL SIMHACHALAM, RCP
1150 West Phillips Street, #134
Ontario, CA 91762

ACCUSATION

Respiratory Care Practitioner License No. 12640

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 2, 1989, the Respiratory Care Board issued Respiratory Care Practitioner License No. 12640 to JOHN DANIEL SIMHACHALAM, RCP (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“....”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“....”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “....”

10 “(c) Conviction of a crime involving driving under the influence or reckless
11 driving while under the influence.

12 “....”

13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,
16 the board or the administrative law judge may direct any practitioner or applicant found to have
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs
26 associated with monitoring the probation. "

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1 CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 12. Respondent is subject to disciplinary action under sections 3750,
4 subdivisions (d) and (g), and 3752, in that he was convicted of a crime substantially related to the
5 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
6 follows:

7 A. On or about May 6, 2007, at approximately 2:25 a.m., respondent was
8 involved in a single vehicle crash, during which he crashed the car he was driving into a
9 neighbors motorcycle and subsequently left the scene. Police officers responded to the scene.
10 Respondent was unable to perform the Standard Field Sobriety Tests. A blood alcohol test taken
11 that evening revealed respondent had a Blood Alcohol Content greater than 0.08.

12 B. On or about December 12, 2007, in the case of *The People of the State of*
13 *California v. John Daniel Simhachalam*, case number TWV701379, before the Superior Court of
14 California, County of San Bernardino, respondent pled guilty, pursuant to a plea bargain, of
15 violating Vehicle Code section 23152, subdivision (b) [driving a vehicle while having a 0.08
16 percent or higher blood alcohol], and admitted that he had suffered a prior conviction for
17 violating Vehicle Code section 23152, subdivision (b), on or about September 13, 2004.

18 DISCIPLINE CONSIDERATIONS

19 13. To determine the degree of discipline, if any, to be imposed on
20 Respondent, Complainant alleges that on or about April 29, 2005, respondent was issued a
21 Citation and Fine, Citation No. C-05-0162, as a result of his plea of nolo contendere to violating
22 Vehicle Code section 23152, subdivision (b), on or about September 13, 2004. That Citation is
23 now final and is incorporated by reference as if fully set forth.

24 14. Complainant further alleges that on or about July 30, 1996, respondent
25 pled guilty to violating Vehicle Code section 23103.5 [wet reckless], in the case of *The People of*
26 *the State of California v. John Simhachalam*, Case No. TSB 94751, before the Superior and
27 Municipal Courts of California, County of San Bernardino. Subsequently, on December 10,
28 1996, respondent failed to disclose this conviction when renewing his Respiratory Care

1 Practitioner License No. 12640.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

5 1. Revoking or suspending Respiratory Care Practitioner License No. 12640,
6 issued to John Daniel Simhachalam, RCP

7 2. Ordering John Daniel Simhachalam, RCP to pay the Respiratory Care
8 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
9 costs of probation monitoring; and,

10 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: May 7, 2008

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16 Original signed by Liane Zimmerman for: _____
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant
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